1948

File No. Cr. A. Kan 48

Legal DEPARTMENT

A BRANCH

Subject:—

Criminal appeals in the High Court of Bombay against the acquittals from Kanara District.

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C O N T E N T S.

Legal Department File No. Cr. A. Kanara /48.

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1947

Judgment recorded by the High Court in Criminal Appeal No, 579 of 1947 (By Government) in case of Imperator vs. Manju Hanmant No. 1 and another no. 2.

The Government Pleader for the Crown.

Mr. N. M. Shanbhag for the accused.

Coram:- Chagla, C.J., and Bhagvati J..

16th February 1948.

Oral judgment per Chagla C.J.:-

This is an appeal from an order of acquittal passed by the Resident Magistrate, F. C. Honawar. The first accused was charged under S. 5 of the Bombay Prevention of Hindu - Bigamous Marriages Act, 1946, read with S. 494 of the I.P.C. and the 2nd accused under S. 6 of the same Act.

The prosecution case was that the first accused con--tracted marriage on or about the 17th May 1947 with accused No. 2 when he had another wife living. It is to be borne in ,ind that the fact that the accused No. 1 married accused - no. 2 is not disputed or challenged by the defence, nor is it disputed or challenged that accused no.1 has another - wife living. The only question that falls for determination in this appeal is whether the accd. No. 1 married No. 2 on the 17th May 1947 or atleast some time after the new Act ca,e into force, which was on the 6th November 1946.

The case of the accd. No. 1 in his defence was that he married accd. no. 2 on the 29th August 1946. Now it is per--fectly true that there is no direct evidence of the marria having been solemnised on the 17th May 1947. There is the evidence of the priest who says that accd. No. 1 and No. 2 along with others had gone to his temple on the day in - -

question

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uestion at about 9 a.m., that they offered coconuts and fru to the God and that he gave prasad to both of them and th also gave him 8 annas as Dakshina and 8 annas as a gift to the God. In his cross-examination he admitted that he did not know when the marriage referred to took place, an he also said that on that day no marriage took place in h temple. Then there is the evidence of 2 band-men who were employed by accd. No. 3 and were each paid Rs 4. They stat that they were asked to play band and in fact played the band on the day in question in the temple, but ~~xxxxx~~ they say that, that was in connection with some Puja which acc nos. 1 and 2 wanted to perform. If the case had stood mer on the evidence of these 3 witnesses, then undoubtedly th would not be sufficient evidence to convict the 2 accd. a to establish that they got married on the 17th of May or some time after the Act came in force. But there is other evidence which, in our opinion, conclusively goes to show that the 2 accused got married some time about the 17th May and that the defence of the accused that they were married so far back on the 29th August 1946 is absolutely false. We have first of all the evidence of the brother of the 1st wife of accd. no. 1, and he says that he heard 2 months before May 1947 that accd. no. 2 was to be given in marriage to accd. no. 1. Thereupon he requested the father of the girl not to give his daughter in marriage to accd. no. 1. He also advised accd. No. 1 not to marry again. Thi witness has not been cross-examined. Now, if the case of the accused was true, it is impossible to believe that thi man would have gone and tried to persuade the practice not to get married when the marriage had already taken place

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some months before. Atleast one would have expected both the father of the girl and accd. no. 1 to tell this man that there was no point in his offering the advise, when the marriage had already taken place and he should have been really presented with a fait accompli. If this evidence is true, and there is no reason why we should not accept this evidence, it is clear that 2 months before May 1947 the 2 accd. had not got married. Then we must also look at the conduct of this brother of the 1st wife of accused no. 1. He on the 16th of May writes to the Police that he hears that his sister's husband is going to marry accd. no. 2 and that the marriage in question has been decided to take place that night or the following day, and he wants the police to take the necessary action. Then on the 19th of May he writes to the priest of the temple asking him if the marriage had been performed or not and to give him the necessary information by the bearer of that chit which he had sent, and it is in respect of this letter that the priest replies to him saying that the marriage had taken place according to Gandharva Vivah rites. Then we have the evidence of the Police patil, and he says that on the 16th of May when he learnt that the marriage was going to take place, he directed the police to go and inform all the parties concerned that it was an offence to re-marry and that they should not do so, and we have the evidence of the Police Jamadar that he informed the father of the accd. no.2 and also the father and uncle of accd. no. 1 and told them that a new law had been enacted and it was an offence to contract a bigamous marriage, and he also says that he noticed preparations of marriage going on. Now, this witness also has not been cross-examined. Here, again, if the marriage had already taken place, it is impossible to believe that the

father

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father of the accd. no. 2 and the father and uncl[illegible] accd. no. 1 would not have informed the Jamadar that there was no intention on their part to contract the marriage and commit an offence as the marriage had already taken place /long before the act came into force. We, therefore, feel that in view of this strong circumstantial evidence the prosecution had established that accd. nos. 1 and 2 got married some time about the 17th of May 1947, and in view of this evidence , the evidence of the Pujari and of the 2 band-men also receives added importance and significance. As we have al-ready pointed out, by/ itself that might not establish any-thing, but read in conjunction with other evidence, that evidence clearly goes to show that those ceremonies were per-formed and the band men were employed not in connection with any Puja but in connection with the marriage which had taken place about that time.

Mr. Shanbha , has taken the point that the prosecution case was that this marriage was contracted according to the Gandharva form and that that form is absolute today under Hindu law and that therefore no marriage at all was in fact contracted and therefore no offence was committed. Now,it is important to note that both the accused admitted having been married. They do not say that they/ have not contracted mar-riage, and the law with regard to bigamous marriage is clear that it is not necessary in order to commit an offence that a valid second marriage should be solemnished. It is enough in law if the parties accused of bigamous marriage go through a form of marriage when the 1st marriage is still subsisting.

The other point raised by Mr. Shanbhag is that the prosecution is bad in as much as there is no proper complaint as required by sec. 198 of the Cr. P.C. that section provides

that.

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that no court shall take cognizance of an offence falling under, among other sections, S. 494 of the I.P.C. except upon a complaint made by some person aggrieved by such offence, and it is common ground that in this case there is no complaint by any person aggrieved. The answer to that point lies in the provisions of the new Act. S. 9 of the Act provides that the offence under that Act shall be cognizable. Therefore every offence falling under the new Act can be taken cognizance of under the provisions of the Cr. P.C. without any complaint being made by any person aggrieved by such offence. Whereas S. 198 of the Code restricts cognizance of certain offences only to cease where a complaint by private part was made, offences under the new Act, although they may fall under S. 494 I.P.C. have been made cognizable without a complaint of a private party. Mr. Shanbhag has sought to argue that S. 9 only refers to SS. 6 and 7 where several offences are created by the Act. These are for solemnising bigamous marriage and also for persons having charge of minors concerned in bigamous marriage. Now, S. 6 provides :-

> "Notwithstanding any law, custom or usage to the contrary, whoever not being a minor contracts a bigamous marriage which is void under S. 4 shall be deemed to have committed an offence under S. 494 of the I...Code."

And S. 4 of the Act makes bigamous marriages void. It is clear therefore that before the passing of this Act a Hindu could contract a polygamous marriage and would not be guilty of an offence under S. 494. It is only this Act which makes the 2nd or bigamous marriage void and thereby constitutes it an offence under S. 494 of the I.P.C.. It is true that this Act does not prescribe the penalty for that offence because under

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under S. 5 the offence under this Act is deemed to be an offence under S. 494. But even so, it is by reason of this Act and by reason of 2nd marriage being made void that an offence is constituted under S. 494 of the I.P.C.. Besides one has only got to look at the language of S. 8 and the language of S. 9 of the Act to realise that the offences under this Act are not only offences under SS. 6 and 7 but also the offences constituted under S. 5. S. 8 provides:-

> "Notwithstanding anything contained in S. 190 of the Cr. P.C., 1898, no court other than that of a Presi-dency Magst. or a Magst. of the First Class shall take cognizance of or try any offences punishable under S. 6 or 7 of this Act."

Now, the reason for this sec. was that but for this section offences under SS. 6 and 7 would have been triable by even 2nd class and 3rd class Magistrate. Therefore the law provides that offences under SS. 6 and 7 should be tried only by - Presidency Magistrates or Magistrates of the F.C. But the important thing to note is that S. 8 speaks of any offence punishable under S. 6 or 7 of this Act which implies that there are other offences under this Act besides those under SS. 6 and 7. If Mr. Chanbhag's argument was sound, then the language used in s. 8 would be similar to that used in S. 9, viz, that any offence under this Act instead of specifying offences under SS. 6 and 7. Therefore, it is clear that while S. 8 deals only with offences under SS. 6 and 7, S. 9 deals with all the offences under the Act and the most im-portant offence created under the Act is the offence of - bigamy referred to in S. 5 of the Act. We, therefore, think that when a 2nd marriage is contracted by a Hindu which has been rendered void by this Act and which is made an offence

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under S. 494 of the I. P. C. no private complaint is ne-
-cessary as contemplated by S. 198 of the Cr. P. C. That
offence has been made cognizable by S. 9 of the Act.

The result will be that the order of acquittal will be
set aside and the accused will be convicted. As the marriag
has been declared void under the Act and this is a new piec
of Legislation and public opinion has yet to be educated, w
think the ends of justice will be met if the first accused
is sentenced to one month's simple imprisonment and the 2nd
accused to one day's simple imprisonment.

Per Bhagvati J.

I agree.

By the Court,

Sd. S. H. Belvadi,

Deputy Registrar.

UPV.

Ex. S.35. 131

In the Court of the Sessions Judge of Kanara,
At Karwar.

Sessions Case No.7 of 1947.

I m p e r a t o r.

Versus.

1. Bhaskar Ganesh Moger,
2. Ishwar Narayan Naik, and
3. Durgappa Narayan Naik, ... Accused.

The Public Prosecutor for the Crown.
The accused no.1 is undefended.
Mr.S.V.Gokarn, pleader for accused nos. 2 and 3.

Offence charged : Accused no.1 was charged with an offence punishable under section 366 of the Indian Penal Code, or in the alternative, the offence punishable under section 366A of the Indian Penal Code; and accused nos. 2 and 3 with an offence of abetment.

J u d g m e n t.

The accused Bhaskar stands charged with having committed an offence punishable under section 366, or in the alternative the offence under section 366A of the Indian Penal Code.

2. The prosecution case may be briefly stated as follows. Jairam who is a peon serving in the Civil Judge's Court, Honavar, has a daughter Rukma. Accused nos. 1 to 3 who live in the same locality as Jairam, viz., Madivalhalla in Honavar used to meet the girl in the market or on the road or elsewhere talked to and joke with her. They were unmarried youths and so was Rukma, an unmarried girl belonging to different castes Rukma, was a Madival, accused nos. 2 and 3 Namdharies; while Bhaskar was a Moger. The parents who found her talking to the accused used to scold her.

3. On 19.8.1946 the girl left the house at about 8 or 9 a.m. It was Gokulasthami day. She did not turn up for noon meals; nor for night meal Jairam returned home that night at about 9 p.m. and learnt that the girl had not returned home. He and his brother Narayan who live in different portions of the same house and other relatives searched for the girl in the locality, but without any result. Next day Jairam sent his brother Narayan to Balkur thinking that the girl might have gone to her grand-mother (mother's mother) for Gokulashtami day. But on 21st Narayan returned without any news of the girl. They continued to search. But on the following day, i.e. on 22nd a godown peon Tippayya took the welcome news to the parents that the girl Rukma was in the shed of Kamakshi with accused nos. 1 to 3.

4. Jairam hurried over to the place with his brother Narayan and brother-in-law Vithal. He met the accused nos. 1 to 3 outside the shed and questioned them about Rukma. They said that they did not know anything about her and denied that she was in the shed. They proceeded further with the intention to see inside the shed and satisfy themselves. But accused nos.1 to 3 threatened them with maramari.

Accused no.1 followed up the threat showing a knife. Jairam and his relatives returned home without going into the shed and lodged the complaint alleging that his daughter who was about 14 years of age had been removed by accused nos. 1 to 3 with intent to seduce her to illicit intercourse. He also complained that she had been illegally detained by accused nos. 1 to 3 in Kamakshi's shed and of the threats of maramari by the accused nos. 1 to 3.

5. The Police registered the offence and went to Kamakshi's shed in Bandihalla in Honavar and found accused nos. 1 to 3 and the girl Rukma. They restored the girl to her parents and arrested the accused nos. 1 to 3.

6. Accused nos. 1 to 3 pleaded not guilty. Accused no.1 however stated that it was the girl who had been after him all the time for about a month before this offence. She used to accost and follow him wherever he went asking him to marry her or even to keep her as a mistress. He declined to do either; but she used to press him whenever she met. He further said that it was the girl herself who went to Kamakshi's shed of her own accord without his knowledge and offered to stay with him either as a wife or mistress. He was at that time living in that shed as a watchman of Kamakshi. He declined to have the girl at all. But still she stayed on with him for three days. He denied that he had any sexual intercourse with her. He therefore denied that he abducted the girl, or took her away by inducement with intent to seduce her to illicit intercourse.

7. Accused nos. 2 and 3 denied their having abetted the commission of the offence at all. Accused no.2 said that he was taken there before arrest by false representation by the police constable Sadashiv on a pretext of measuring burnt house of Kamakshi. Accused no.3 said that he happened to be there as his master had sent him to ask Kamakshi if she wanted cudgon leaves. Accused nos. 2 and 3 thus tried to explain their presence at the time of the police arrival and at the time of the panchanama of the shed of Kamakshi and of their arrest.

8. Questions for consideration therefore are :

(1) whether accused no.1 abducted Rukma in order to seduce her to illicit intercourse?

(2) Whether Rukma was at the time of the offence under 18 years of age?

(3) Whether accused no.1 induced her to go to him in Kamakshi's shed?

(4) Whether he did so with intent that she may be or knowing that she was likely to be seduced to illicit intercourse with another within the meaning of section 366A of the Indian Penal Code?

(5) Whether accused nos. 2 and 3 abetted accused no.1 in the commission of any of these offences?

9. My findings :-

(1) No;
(2) Yes;
(3) Yes;
(4) No;
(5) Not proved beyond a reasonable doubt.

R e a s o n s.

10. A great part of the prosecution case is easily proved not only by the testimony of the prosecution witnesses, but by the admissions

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of Rukma and of accused no.1 himself, however necessary to know what facts are exactly established before going to the discussi of law bearing on those questions. When one is sure of the facts, the application of law certainly becomes easy.

11. That Rukma (Ex.23) was below 18 years of age at the time of the offence is clear from the extract of the birth register produced at Ex.4. The girl's father Jairam (Ex.3) swore that the girl mentioned in that extract is his daughter Rukma. His name and his father's name and the caste are all clearly mentioned against the entry of a female child in that extract. The girl's name Rukmini is also mentioned there. The girl was shown in this extract as born on 15.8.1930. It seems that accused no.1 produced a similar extract to the same effect in the Committing Magistrate's court and that is at Ex.26A. Here both the prosecution and the defence therefore agree that the girl Rukma (Ex.23) was born at Balkur village on 15.8.1930. This offence took place on 19.8.1946 when the girl was 16 years and 4 days old and consequently below 18 years of age. She was also examined for age by Dr.Pandit of Honavar and he opined (vide Exs.15 and 16) that the girl was about 16 years old. But we can get more definite information about her age from the birth extract. I have therefore no doubt whatsoever that the girl was below 18 years of age at the time of the offence.

12. Accused nos. 1 to 3 and Jairam with his wife Ganga (Ex.6) and daughter Rukma (Ex.23) used to live in the same locality known as Kadivallialle in Honavar since a long time. They were thus brought and bred up in the same locality. It was therefore easy for them to get into touch with one another. They must have also played together during their infancy and childhood. It is in the evidence of several prosecution witnesses that accused nos. 1 to 3 and the girl used to talk to one another and even cut jokes. Jairam saw this once for himself about a couple of months before this offence. He did not naturally like this. He came home and took his daughter to task and told her that it did not become an unmarried maiden like her to talk to unmarried youths of different castes on public roads and public places. When next so scolded she kept quiet. Jairam further swore that he took accused nos. 1 to 3 also to task on the following day and they also kept quiet. The girl's mother Ganga (Ex.6) also surprised accused nos. 1 to 3 and Rukma in such a talk. All four of them were coming towards home from the fish market and Ganga was going there. She told the girl then and there that she should not talk to young people on the road like that and advised her to go home directly and quietly. She did not however say anything to accused nos. 1 to 3, for she said that they were 'anyagers' to her. She probably thought that if her daughter were not within decent bounds it did not matter what stranger youths were. Jairam's younger brother Narayan (Ex.7) also swore that he saw these persons talking on a couple of occasions. He rebuked her at home, but the girl boldly questioned him back what harm there was if she talked. The uncle also scolded accused nos. 1 to 3 and they kept quiet.

13. The prosecution also examined one Vithal (Ex.8). He is Ganga's (Ex.6') brother. He also said that he found accused nos. 1 to 3 talking to the girl about 2 or 3 times. He scolded them, but they kept quiet. His evidence is not however free from doubt. For when questioned by the police he admittedly told them that out of the 3 accused he saw accused no.1 talking to the girl. While selecting accused no.1 before the police for that version he seems to have deliberately omitted accused nos. 2 and 3. His present story that accused nos. 2 and 3 also were found talking to the girl seems therefore doubtful. But the evidence of the other prosecution witnesses already mentioned is entirely free from doubt. I am not prepared to discard it because it comes from the relatives of the girl Rukma, specially when it is supported by the evidence of independent persons like Shripad Kalyanpur (Ex.14) and Ganpati (Ex.20). Shripad is a retired postman. He swore that he used to find accused nos. 1 to 3 sit on a bridge within the sight of Jairam's house. He also used to see them round about in the neighbourhood of Jairam's house. Whenever the girl Rukma came out they used to meet her and talk and cut jokes. He saw this for about 4 or 5 times. He said that he did not question either the accused or the girl as to why they were talking or joking; for, he thought that it was not his business at all. We often meet people of this type who would mind strictly their own business. I do not therefore think that I should treat his testimony as incredible because he confined himself to his own concerns. Another witness on this point is Ganpati. He has to pass by Jairam's house in order to go to his own work. He saw accused nos. 1 to 3 talk to and joke with the girl and wandering about here and there. He saw them together even so late as 7 p.m. He is not interested in the girl's relatives; nor is he prejudiced against accused no.1 to 3. It is true that he was not examined in the Committing Magistrate's Court though his statement was recorded by the Police. I am therefore think that he is a got-up witness. The last witness Vithu (Ex.22). He is a stamp vendor as well as a pleader's clerk. He resolves in Wadivalhalla. He swore that he saw accused nos. 1 to 3 and Bhaskar moving about. They used to talk and joke. He used to see them at various times - 5 or 6 or 7 p.m. - moving about in the town. I accept this evidence and hold that accused nos. 1 to 3 used to talk to and joke with the girl and that they were on terms of familiarity with her. That was easy for them because they had been born and brought up in the same locality as stated above.

14. Rukma (Ex.23) herself admitted that she used to talk to accused nos. 1 to 3. I have seen her in the witness box. She struck me as a very bold and daring girl. She did not hide even for a moment her real attention towards the accused. She agreed that she wanted accused Bhaskar to escape conviction and said that she had decided to go and live and spend days with him even as a wife or mistress after he is released. The admission of the girl therefore on this particular point, i.e. of the familiarity with the accused nos. 1 to 3 must be accepted without any hesitation. Accused no.1 also admitted; but he tried to put the blame on her by saying that it was she who used to take the initiative in accosting and talking to him. He said that he used to keep mum even when so addressed but she used to pester and bother him whenever she happened to

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shows how far their intimacy had advanced. Accused no.3 however denied that he ever talked to the girl. Accused no.3(a brother (accused no.3) said that he talked to the girl only twice asking what kind of fish she had purchased in the market. I do not understand why accused nos. 2 and 3 should have gone to the extent of falsely denying their familiarity with Rukma. I accept the prosecution evidence and believe that accused nos. 1 to 3 on the on hand and the girl on the other were on terms of familiarity. Rukma however got into more intim-te and personal touch with accused no.1.

15. That the girl left her parent's roof on the Gokulasthami day of last year and went directly to Kamakshi's shed and lived with accused no. 1 for 3 days is clear from Rukma's own admissions. Accused no.1 (Ex.29) also admitted that the girl went to him at about 9 am on that Gokulasthami day and stayed with him for 3 days. The girl's abscondance from home is further proved by the evidence of Jairam at Ex.3, Ganga at Ex.6, Narayan Ex.7 and Vithal at Ex.8. Having seen the girl s it is no surprise to me that she went boldly to accused no.1 an lived with him in the shed. Her mother stated that in about 6 months after Rukma attained puberty she told her mother that parents shou marry and settle her down in life. The mother promised to do so and the girl went on pressing her for early marriage. It is also in evidence of the girl's uncle Narayan that the girl used to wander about and used to be absent from home for hours together. I think the parents had rightly read these early signs of ear-mindedness of the girl and brought about her marriage. But the girl who was given to talking to men even on roads as admitted by the mother seems to have kept up her familiarity with accused no.1 who does not seem to have lagged behind in taking advantage of the girl.

16.Apart from the admissions of Rukma and accused no.1 there is ample evidence on behalf of the prosecution to prove that Rukma and Bhaskar lived together in that small shed of Kamakshi in Nandihalla for about 3 days. Hanmant (Ex.13) lives just in front of Kamakshi's shed across the road. He owns some paddy lands behind that shed. He therefore used to go to his paddy lands every day on passing by that shed. He swore that he saw accused nos. 1 to 3 live with the girl in the shed. He used to see them throw off their dinner leaves and wash their hands after dinner. I see no reason whatsoever to discard the evidence of this witness. He admitted that h. knew accused nos. 2 and and the girl before. He did not ask them why they were living there; nor did he care to inform the girl's father. When questioned why it we so, he stated without the least hesitation that it was no business of his. His certainly seems to be non-intervention policy. He does not meddle with the affairs of his neighbours, but leaves them severely alone. This sort of attitude may not appeal to one whose sense of civic duty is developed. But it is not in my opinion rare to find people of this type. I therefore believe Hanmant when he said that he used to see accused nos. 1 to 3 live in that shed with the girl. If on their own showing Bhaskar and Rukma lived for 3 days together in that small shed just in front of the house of Hanmant across the road, he must have necessarily seen them during these days. I do n therefore think that the evidence of this witness sounds incredible or improbable. He swore that he saw accused nos. 2 and 3 also and I believe him.

17. Another witness Vasudev (Ex.31) may be mentioned in this connection. He lives in the locality called Kalagirpalya. He had once gone out for a walk towards the side of Kamakshi's shed. He saw accused nos. 2 and 3 standing at the door of the shed which faces the road. But as soon as accused nos. 2 and 3 sighted this witness they hurried back into the room and that roused the suspicion and the curiosity of this witness. He therefore went to the shed to see what the matter was. He found the girl there and he questioned accused no.1 as to why the girl was there and the accused no.1 said that he did not know. The witness next questioned the girl and she did not reply. I have no reason whatsoever to disbelieve the evidence of this Vasudev. He struck me as a person capable of doing that he claimed to have done on that occasion when once his curiosity was roused. His mind may be usefully contrasted with that of Hanmant. In my opinion, both of them told the truth when they gave their versions though they have developed different attitudes towards life and their neighbours.

18. I may next mention Marshal (Ex.11). He served also as a panch with Hanmant at the time when the police attached the various articles and restored the girl to her parents from Kamakshi's shed. This witness Marshal lives only 25 mars off from Kamakshi's shed. He is thus a close neighbour. He saw accused no.1 live in that room. He also saw accused nos. 2 and 3 go there very often. I believe this witness as well. Kamakshi (Ex.10) who owned that bath shed swore that she had asked accused no.1 to stay in her shed and keep a watch over the surrounding garden and the paddy fields. A couple of days thereafter she happened to go back to that room with a view to see her garden. There she was surprised to find accused nos. 1 to 3 and the girl living in that shed. She questioned accused nos. 2 and 3 and the girl and asked them to leave her shed. The girl is said to have told her that as she had gone there only casually and promised to go home in the evening. But Kamakshi shrewd as she is suspected that something was wrong. She therefore asked accused nos. 2 and 3 and the girl to leave the shed and go away. She even threatened to report them to the police and it is in her evidence that she was actually on her way to the police station. But she met on the way constable Sadashiv (Ex.24 who supports her) and informed him that a girl was kept in her shed and that she herself was not responsible for the same. But the constable assured her that he was going directly to that shed. Kamakshi's evidence is, in my opinion, reliable on this particular point. She lost her husband some years ago. But she lives with accused no.1's brother Devendra. Rukma herself admitted that Kamakshi is a keep of Devendra. But when Kamakshi was closely cross-examined on her connection with Devendra she probably felt ashamed and stated quite incredibly that she did not know if Devendra was staying with her. She is, I believe, a mistress of accused no.1's brother Devendra. Devendra himself had come to Karwar for this case and he had told his mistress so. Devendra is certainly interested in his brother. Consequently the mistress is also interested in accused no.1 and his friends. She would, if she could, give a helping hand to save them all. Still she stated that accused nos. 2 to 3 were with that girl in that shed and she threatened to report them to the police. She negatives Rukma's belated story that accused nos. 2 to 3 were kept by Kamakshi in that shed as her watchmen.

19. The last witness on this point is Tippayya (Ex.9). He also lives in the close neighbourhood of Kamakshi's shed. He had gone to his father-

She was asked questioned why if accused had refused to have her either as wife or mistress she continued to stay with him for 3 days with her love unfulfilled and she knew silence was the best shelter for her. She therefore remained silent and left the question unanswered. I find it impossible to believe that the girl who had gone to accused no.1 on her own showing with the avowed object of selling herself body and moulit soul to accused no.1 should have kept her purity unsullied. Accused no.1 was just 22 years old and she was only a little over 16 years. I must therefore hold on the evidence before me that she was seduced to illicit inter course in the kath shed.

26. The next question is whether it was accused no.1 who induced her to go to that shed. I find myself entirely satisfied that he did so. I believe that he took the fullest advantage of his familiarity & intimacy with the girl. He used to account and talk to her as often as he could in Sadivalahalli. I further believe that he must have told her that he was going to live in Kamakshi's shed as watchman from Gokulashtami day and onwards. Otherwise the girl could not have known that accused no.1 would be found in that shed and she would not have gone directly from her parent's house to Kamakshi's shed on the Gokulashtami day. The girl despite her determination admitted that she went to that shed on the very day on which accused no.1 went to the shed to live. She further said that it was she who first started cooking in the shed. She cooked food on those 3 days at least for accused no.1 and for herself. Before the girl went there a comb, a small bottle of cocoanut oil and even kumkum powder in accused no.1's chalan were kept ready for the girl's use. The girl swore that all those things were already there before she went to stay in that shed including the cook pots and the provisio for 3 or 4 days. Accused no.1 must have procured all these things after making arrangement with this girl so as to begin to live in that Kamakshi's shed from Gokulashtami day onwards. That is why he goes to that shed in the morning of 19th and the girl follows him there within an hour or so and stays with him there for 3 days. I believe that accused no.1 must have consented to have the girl and to return her love. That amounts, in my opinion, to inducement. By such promise of return of love he must have induced that girl to go to and live with him for 3 days.

27. The girl tried her level best to mislead the court as to how she came to know of accused No.1's residence in that Kamakshi's shed. A perusal of her evidence would show how desperately she fought against attributing that information to accused no.1. But she had already once stated that she informed her parents that she would go to accused no.1 and live with him in Kamakshi's shed. If so, she already knew that accused no.1 would be in Kamakshi's shed before she left her parent's roof. She changed that story when closely cross-examined and stated that she had gone there on Gokulashtami day to see Kamakshi but found her absent and found accused no.1 living in the shed and therefore she started staying with him there despite his refusal to have her. But when she was reminded of her earlier version that she ~~xxxxxxxxxxxxxxx~~ had informed her parents that she would go to accused no.1 in Kamakshi's shed she once again remained silent and left the question unanswered. I believe that she knew from accused no.1 that the latter would be in Kamakshi's shed from Gokulashtami day onwards. That is why she went directly on that day from h

parent's house. That indicates a prior arrangement between the accused no.1 and this girl. The accused no.1 on his part carried out that arrangement by keeping ready every thing for the girl's use and for their meals.

26. Thus, I am satisfied with all the facts that were alleged by the prosecution so far. I accept the prosecution evidence and believe that accused no.1 must have induced the girl to go there and to live with him. He therefore used such means as were sufficient to induce the girl to go to Kamakshi's shed and live with him within the meaning of section 366A of the Indian Penal Code. But that provision requires that such inducement in taking the girl away under 18 years of age must be made with intent that she may be or with knowledge that she is likely to be seduced to illicit intercourse with another. The word another has got to be specially noted in this provision. But here I have come to the conclusion on the prosecution evidence itself that accused no.1 induced the girl to go to that shed in order to seduce her to illicit intercourse not with another but with himself. If this is the correct view to take in this case - there being no evidence that the girl had sexual intercourse with any person other than the accused no.1 - then it must follow that the offence does not come within the meaning of section 366A of the Indian Penal Code, vide A.I.R.1933 Calcutta, 552, (Abbas Sahare v. Emperor). It lays down that, the person who induces a girl of an age between the years of 16 and 18 (as Rukma was in this case is) without force or fraud to go to any place with the intention that she will have illicit intercourse with himself does not commit any offence. The new section however makes it an offence in the case of such girl if she is induced by a person to go from any place with intent that she may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person. It cannot be said in the circumstances of the case that accused no.1 induced that girl to go to the shed in order that she might be seduced to illicit intercourse with any person other than himself. I believe that he induced her to go there that he may himself seduce her to illicit intercourse. If that is so accused no.1 cannot be punished under section 366A. To the same effect is the ruling in A.I.R.1930, 497 (Ram Saran v. Emperor). It also says that the inducement to leave must have its object seduction by another person and may not by the person who himself induces the girl to leave her husband or parent See also A.I.R.1943 Calcutta, 438 (Manik Molla v. Emperor) which is also to the same effect. It points how that section 366A is aimed at pimps procurers.

27. The net result is that the accused no.1 cannot be punished under section 366 for the simple reason that he did not use force or deceitful means in taking the girl to that both shed; nor can he be punished under section 366A because accused no.1's clear intention was that he himself should seduce the girl to illicit intercourse. The result is indeed, in my opinion, very unhappy. The learned Public Prosecutor felt very strongly about this. So did I. But when administering justice we should not run away with our own personal feelings in the matter. The plain provisions of law should be construed just as they are without any personal element and when I applied my mind to the plain provisions of law and considered the evidence I must say however much reluctant I may personally be that accused

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no. 1 must after all escape conviction both under section 366 and 366A.

29. If I have taken the correct view so far then must follow that accused nos. 2 and 3 cannot be convicted as abettors. When the principal offence is not proved against the principal offender there can be no question of abetment at all. There is no proof at all that accused nos. 2 and 3 abetted accused no.1 in abducting the girl, abduction itself being not proved. I am aware that section 366A would easily contemplate persons like accused nos. 2 and 3. But I do not think that they can be held to have abetted that offence under section 366A. If accused nos. 2 and 3 themselves had adopted such means as induced the girl to leave her parent's house and to go to accused no. 1 in Kamakshi's shed with intent that she might be seduced to illicit intercourse with accused no. 1, then they would come within the mischief of this provision of law. But they are not charged with that and there is no evidence either that they themselves adopted any means to induce the girl to go there. But they are charged with having abetted accused no.1 in committing the offence punishable under section 366A. The principal offender under section 366A is therefore accused no.1, when that offence is not brought home to him accused nos. 2 and 3 as alleged abettors must also escape.

29. In considering the evidence against accused nos. 2 and 3 one must bear in mind that according to the prosecution evidence accused nos. 2 and 3 also lived in that shed. They denied it. But I accept the prosecution evidence and believe that they lived there during those 3 days. I further believe that accused nos. 1 to 3 denied the girl's presence when Jairam and his relatives went to that shed on 22.8.1946. They also threatened the relatives with maramari and accused no.1 even pointed the knife article no.5. All this was put down in the complaint (Ex.5) within an hour after the threats and the knife was also recovered soon after. The complainant could not have imma invented the knife and the story of threats. I therefore believe that accused nos. 1 to 3 falsely denied the girl's presence and threatened away the relatives. I also believe that accused nos. 2 and 3 hid themselves from the neighbours by my hurrying back into the room when sighted. But what does all this show. I believe that this part of the prosecution evidence can at the most attribute a guilty knowledge to accused nos. 2 and 3. They are, I believe, friends of accused no.1. They knew that accused no.1 and Rukmu were in that room. After knowing all this they seem to have helped the pair by keeping it a guarded secret from the neighbours. The conduct of accused nos. 2 and 3 may offend against the moral code. As good neighbours they were expected to go and inform the girl's parents. But law does not punish breach of ethical rules. They were not bound to inform the parents. The law does not punish persons who helped the guilty pair during their stay in the shed. It is true that the offence under section 366A is, as much as the offence under section 366 a continuing offence, vide I.L.R.53 Allahabad 140 (Emperor v. Nathua Dhirar). But there is no evidence before me that accused nos. 2 and 3 did anything by way of inducing the girl either to come to that shed or to stay on in that shed with accused no.1. They only seem to have kept quiet over what was happening in the shed and threatened away the relatives lest the girl might be molested or taken to task by the parents. I do not think that in these circumstances the accused nos. 2 and 3 can be

punished for abetment. I have no doubt that the story they set up to explain ~~in~~ their ~~presence~~ admitted presence in the shed was as false as it was desperate. But the prosecution must succeed not on the falsity of the defence but on the strength and the truth of its own case.

30. The ruling in 46 Bom.L.R.203 (Emperor v. Ayubkhan Hirsultan) does not apply to the facts of this case. There the girl was over 14 and under 16 years of age. She consented to an act of illicit intercourse with a man and was persuaded to elope with him for that purpose. The offence of kidnapping was held proved under section 366 of the Indian Penal Code. But here Rukma was above 16 years of age when the offence was committed. Secondly, the prosecution itself does not say that it was a case of kidnapping. For, it was clearly according to them a case of abduction. The consent of girl under 16 years of age to an act of illicit intercourse was rightly held in that case not to save the accused. But such a question of consent of the girl does not arise at all in this case.

31. The opinion of the Assessors was divided. Assessors nos. 1, 3 and 4 opined that accused no.1 was guilty of abduction under section 366 I.P.Code. But prosecution evidence does not sustain that opinion at all for the simple reason that there is no evidence at all ~~for~~ ~~the~~ ~~simple~~ ~~reason~~ ~~that~~ ~~there~~ ~~is~~ ~~no~~ ~~evidence~~ that accused no.1 compelled by force or induced by deceitful means the girl to go to him in the shed. I cannot therefore accept the opinion. The other assessor opines that accused no.1 was not guilty. I agree with him. Assessor No.1 alone further opined that accused nos. 2 and 3 are guilty of abetment of abduction. But for reasons given above I disagree. I accept the opinion of Assessors nos. 2 to 4 and hold that accused nos. 2 and 3 are not guilty of abetment.

32. Before closing I should express my hope that the accused no. 1 would see the gravity of the social evil in the act he did. Admittedly the girl went to this accused during the committal proceedings and stayed with him at Virai for months together. It was only when accused no.1 was taken into custody on cancellation of his bail that the girl returned to her parents two months back. The girl appears to be very wilful and obstinate. Parents plainly said to me that she does not listen to them any longer. It is best that Shankar and Rukma should marry. That is the least that the society should expect by way of atonement for the past unhappy episode. No one would be more glad than myself to hear that Shankar and Rukma have married and settled down as useful members of the society.

Order.

I acquit accused nos. 1 to 3 of the offences with which they were charged and direct that they be set at liberty.

The bail-bonds of accused nos. 2 and 3 being given the benefit of doubt are cancelled.

M. C.J.Deodhar.
Sessions Judge.

22nd December 1947.